IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 24 A (SS) of 2003
(Old No. 42753/1993)

Smt. Kanwal Jeet ..... **Petitioner.**

Versus

Union of India and others. .....**Respondents.**

Approved for reporting

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Not approved for reporting

Date of Decision : May 7 , 2007

Initial of Judge

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IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 24 A (SS) of 2003
(Old No. 42753/1993)

Smt. Kanwal Jeet,
Aged about 45 years,
Wife of Sri Chandra Kant Mudgal,
R/o 21, Adwaitanand Marg,
P.O. – Rishikesh,
District – Hardwar. **……Petitioner.**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Director General (Delhi Sector), Central Industrial Security force, Home Ministry, Lodhi road, New Delhi.
3. The Deputy Inspector General of Police, Central Industrial Security force, Malviya Nagar, Saket, New Delhi.
4. The Group Commandant, Central Industrial Security Force, P.O. Malviya Nagar, New Delhi – 17.

……Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Sharad Sharma, learned counsel for the petitioner and Sri S.K. Mishra, learned standing counsel for Union of India on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

A. That a writ in the nature of Certiorari, or like writ, order direction may issue to quash the dismissal order dated 31.03.1992, Appellate Order dated 14.08.1992 and the Revisional Order dated 03.11.1992.

B. That a writ in the nature of Mandamus issue to command the opposite parties to deem the petitioner as

holding the post of Constable and that she be accorded all the benefits and privileges of continuity of her services.

C. *That issue writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

D. *Award the cost in favour of the Petitioner.*

The stand of the petitioner is that she was appointed as Constable in Central Industrial Security Force in the year 1975. Vide order dated 19.04.1991, petitioner was transferred from Rishikesh to BHEL, Hardwar. Petitioner was fallen ill consequently, she could not join her duties at Hardwar and sent Medical Certificate along with application for leave regularly. However, respondents have served chargesheet dated 12.09.1991 upon the petitioner and Assistant Commandant was appointed as Inquiry Officer on 20.11.1991. on 31.03.1992, the Disciplinary Authority passed impugned order, dismissing the petitioner from service.

Aggrieved with this order of dismissal dated 31.03.1992 passed by Disciplinary Authority, petitioner filed appeal before Deputy Inspector General, Central Industrial Security Force and the same was rejected vide order dated 14.08.1992. Aggrieved with the rejection order of appeal dated 14.08.1992 petitioner filed revision before Director General, Central Industrial Security force on 28.09.1992. The Director General, also rejected the revision vide order dated 03.11.1992.

Aggrieved with the orders passed by Group Commandant, Deputy Inspector General and Director

General, petitioner preferred this writ petition before Allahabad High Court.

Learned counsel for the petitioner has attacked on these orders on the following grounds, first, inquiry report was not furnished to the petitioner and as such, the order impugned has been passed in violation of principle of natural justice, as also held by Hon'ble Supreme Court in the case of Union of India Vs. Mohd. Ramzan Khan reported in AIR 1991 SC 471. The second ground on which petitioner has attacked the impugned order is that punishment awarded to the petitioner is not commensurate to the gravity of charges. Third ground is that no opportunity of cross examination was given to the petitioner during disciplinary proceedings.

I have gone through the impugned orders and perused the record, so far as the ground that opportunity of cross examination to the witnesses was not given to the petitioner is concerned, neither this ground has been pleaded by the petitioner in the writ petition nor this ground is mentioned in the appeal and revision filed by the petitioner.

So far as the ground that punishment awarded to the petitioner is not commensurate to the gravity of charges is concerned, it is noteworthy to mention here that petitioner is member of uniform force. She was transferred to Central Industrial Security force Unit, BHEL, Hardwar vide order dated 10.04.1991 and was relieved from Central Industrial Security force Unit, IDPL, Rishikesh on 19.04.1991 (afternoon). As per Rules applicable at the relevant time 10 days time was available to the petitioner to join her duties at new place of posting and as such, she was supposed to join her duties at Central Industrial Security force Unit, BHEL,

Hardwar latest by 30.04.1991 (forenoon) but she failed to do so. She was again advised to report at Central Industrial Security force, BHEL, Hardwar vide letter dated 14.05.1991. But she continued her unauthorized absence and failed to join her duties at Central Industrial Security force Unit, BHEL, Hardwar. After lapse of 11 months, when she did not join her duties nor inclined to do so, on 12.09.1991, chargesheet was furnished upon her and the same was received by her on 16.09.1991. She submitted her reply on 11.10.1991. Inquiry was conducted by the Assistant Commandant, Central Industrial Security force Unit, who submits his report to the Disciplinary Authority, copy of which was also supplied to the petitioner vide letter dated 01.12.1992 for submission / representation, if any, against the inquiry report and the same was served upon her on 12.02.1992. Petitioner submitted her representation on 24.02.1992 and after considering representation of the petitioner Group Commandant, CISF, passed order of dismissal of petitioner on 31.03.1992.

The submission of learned counsel for the petitioner is that petitioner could not join at new place of posting, as she was ill with effect from 30.04.1991. The Disciplinary Authority while dealing with the fact that petitioner was ill has held that she reported sick on 30.04.1991, this fact itself indicate that she was not interested to join at new place of posting and found convenient shelter behind the medical certificate. The type of illnesses mentioned in the medical certificates are mostly of chronic nature and would not normally, particularly keeping in view the kind of treatment she underwent, incapacitate a person to the extent that she

even can not go to join a unit which hardly involves one hour's journey period. The medical certificates produced also do not indicate that she was bed ridden or incapable to move out. Further, there are better facilities at Central Industrial Security force Unit, BHEL, Hardwar than her earlier place of posting i.e. Central Industrial Security Force, IDPL, Rishikesh. Had she really been sick, she would have jumped at the opportunity and immediately joined Central Industrial Security force Unit, BHEL, Hardwar, which would provide far better medical cover than what is supposed to have had during her absence.

I agree with the findings recorded by the Disciplinary Authority. Members of uniform forces cannot absent themselves on frivolous pleas having regard to the nature of duties enjoined on these forces. The matter cannot be taken lightly particularly when it relates to uniform forces of this country.

In the circumstances stated above, I do not find force in the submission of learned counsel for the petitioner that punishment awarded to the petitioner is disproportionate to the gravity of charges. So far as the ground that inquiry report was not furnished to the petitioner is concerned, from the perusal of record, it is apparent that this ground is not available to the petitioner. In para 5 of the impugned dismissal order it is specifically mentioned that the copy of the inquiry report was supplied to the petitioner vide letter 01.12.1991 for submission / representation, if any, against the inquiry report. The above referred letter was served upon her on 12.02.1991. The delinquent officer submitted her representation dated 24.02.1992, which is also subject matter

of consideration in the final order. Thus, from perusal of impugned order it is clear that inquiry report was submitted to the petitioner and she was given sufficient opportunity of hearing and in fact, she have represented, thus, there is no violation of principle of natural justice.

For the reasons recorded, writ petition lacks of merit, as such, is dismissed. No order as to costs.

(M.M. Ghildiyal, J)

May 7, 2007
SKSHARMA